(2014) 09 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 17297 of 2013

Sonu Kapoor APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : (2015) 3 RCR(Civil) 293

Hon'ble Judges : Hemant Gupta, J;Bharat Bhushan Parsoon, J.

Bench : Division Bench

Advocate : Shyam Kumar Sharma, Advocate, for the Appellant; Shubhra Singh, D.A.G., for the Respondent

Judgement

Hemant Gupta, J.?The challenge in the present writ petition is to communications dated 24.03.2009 (Annexure P-10); 02.06.2009 (Annexure P-11); 16.06.2009 (Annexure P-15) and 10.04.2012 (Annexure P-22) as well as an order dated 19.11.2012 (Annexure P-26) whereby the allotment of plot No. 2396, Sector 65, Faridabad, was cancelled. The petitioner applied for a residential plot at Sector 65, Faridabad by raising loan from Central Bank of India, Putlighar Branch, Amritsar on deposit of 10% of the amount of total sale consideration i.e. Rs. 2,22,138/-. In the draw of lots, the petitioner was successful and letter dated 30.05.2007 was forwarded by Estate Officer, Haryana Urban Development Authority (for short ''HUDA''), Faridabad to Manager, Central Bank of India, Queens Road, Civil Lines, Amritsar (Punjab) i.e. the address given by the petitioner in the application form submitted to the respondents. It was pointed out that the allotment letter was sent by Estate Officer, HUDA to the Bank which was released after the petitioner cleared the loan of the Bank on 08.02.2012. A copy of letter of allotment has been attached with the writ petition as Annexure P-6. The relevant conditions from the letter of allotment reads as under:-

"4. In case you refuse to accept this allotment you shall communicate your refusal by a Registered A.D. Letter within 30 days from the date of issue of this allotment letter, failing which this allotment shall stand cancelled, and the earnest money deposited by you shall be forfeited to the authority & you shall have no claim for damages.

5. In case you accept this allotment please send your acceptance by Registered A.D. along-with an amount of Rs. 333207.00 within 30 days from the date of issue of allotment letter which together with an amount of Rs. 222138.00 paid with your application form as earnest money will constitute 25% of tentative price."

2. The petitioner asserts that she contacted Central Bank of India in October, 2007 and on being informed that she is successful in draw of lots, she sent a demand draft of Rs. 3,60,000/- on 24.10.2007 towards 15% of the amount of total sale consideration to Estate Officer. The petitioner sent another communication on 30.08.2008 that she has been informed that demand draft of Rs. 3,60,000/- has not been received, therefore, she sought to furnish a new demand draft on issuance of a certificate by the respondent-HUDA that the amount of draft has not been credited to their account. It was on 04.09.2008, the Bank confirmed that draft dated 24.10.2007 has not been paid.

3. On 24.03.2009, the allotment of the plot was cancelled, the communication which was sent to the petitioner through Central Bank of India, the address available with the respondents. Thereafter, the petitioner submitted representation on 22.05.2009 referring to payment of Rs. 3,60,000/- vide demand draft dated 24.10.2007. The representation was declined by learned Administrator for the reason that no payment has been made within the period as stipulated in the allotment letter. The draft was never received in HUDA office nor was it even encashed at any stage. The revision was dismissed on 10.04.2012 after returning a finding that draft of 15% was sent after the expiry of period of 30 days, therefore, no concluded contract has come into existence. The petitioner relies upon policy dated 20.03.2007 (Annexure P-27) contemplating period for extension of initial deposit of 15% to contend that if the petitioner has not remitted the amount within 30 days, but in terms of the policy, the period of deposit should have been extended.

4. In reply filed on behalf of respondents No. 1 to 3, it is averred that allotment letter dated 30.05.2007 was issued to the petitioner through Manager, Central Bank of India, through registered post as the application was submitted by the petitioner through Bank. The address in the application form was that of Bank alone. The allotment letter was duly received by the Central Bank of India. A communication was received from the Senior Manager of the Bank on 12.02.2008 by HUDA that the loan amount is still overdue i.e. Rs. 1,81,643/- plus interest and that the respondents should not give possession without their no objection. Another letter was received on 26.12.2008 not to give possession or transfer without. No Objection Certificate of the Bank. It transpires that the amount deposited by the Bank for and on behalf of the petitioner was deposited by the petitioner with the Bank only on 8.2.2012.

5. On 29.04.2014, the Estate Officer, HUDA was directed to file its affidavit as to whether a copy of allotment letter which was admittedly sent to the Bank by registered post, was also sent to the petitioner or not. Today Mr. Bansal has filed an affidavit of Sh. Satpal, HCS Estate Officer, HUDA, Faridabad that the allotment letter was sent to the petitioner at the correspondence address i.e. Central Bank of India, Queens Road, Civil Lines, Amritsar, Punjab as mentioned in the application form, through registered post. It is also mentioned that the address in the application form is the only address available with the respondents and that the allotment letter was duly received by the Bank.

6. Learned counsel for the petitioner relies upon a decision of Division Bench of this Court in CWP No. 1120 of 2010 titled as Poonam Arora v. Haryana Urban Development Authority and another, dated 20.03.2012 in respect of the contention that the petitioner having deposited the installments, the allotment of plot could not be cancelled.

7. We have heard learned counsel for the parties and find no merit in the present writ petition. The petitioner has taken loan from the Central Bank of India. In the application form submitted to apply for the plot, the correspondence address is that of the Bank alone. There is no indication in respect of any other correspondence address of the petitioner. It has also come on record that letter of allotment was sent to Central Bank of India. Application form (Annexure P-1) filed by the petitioner shows that same does not relate to 1 Kanal plot in Sector 65, Faridabad. In fact, such application form is in respect of 14 Maria plot in Panchkula. The allotment letter was sent to the petitioner on the address mentioned in the application form i.e. Central Bank of India, Queens Road, Civil Lines, Amritsar.

8. The argument of the petitioner that the amount of Rs. 3,60,000/- was remitted on 24.10.2007 i.e. after 117 days, therefore, in terms of the policy, the petitioner is entitled to extension in time in deposit of the 15% of the amount is not tenable. There is categorical assertion on behalf of the respondents that letter dated 24.10.2007 has not been received. It has been certified by the Bank that draft of Rs. 3,60,000/- dated 24.10.2007 was not received nor has been paid vide Annexure P-9. It is only on 21.12.2010, the alleged duplicate draft in lieu of draft dated 24.10.2007 was issued vide Annexure P-l3. The petitioner has not produced any forwarding letter or the diary number against which the draft was sent or received. Therefore, one has to proceed on the assumption that 15% payment was not made within 177 days as alleged. The petitioner admits that not only she has not paid 15% amount to HUDA but she did not even paid the loan amount availed from the Bank as is averred in para No. 3 of the written statement filed by HUDA on 13.09.2013. The petitioner has not filed any rejoinder to such a reply filed by HUDA. Therefore, failure to deposit 15% of the amount within the time granted does not lead to a concluded contract.

9. The reliance of the petitioner is on the policy framed on 20.03.2007 (Annexure P-27). The relevant conditions from the policy are as under:-

"3. Powers for condonation of delay

For all categories of plots except commercial plots

Besides surcharge, penal interest at the rates applicable at the time of allotment, shall have to be paid for the delayed period to be reckoned from the date of allotment to the date of payment.

In no case condonation of delay for more than one year shall be done."

10. In terms of the conditions of the letter of allotment, the petitioner was to communicate acceptance by Registered A.D. post along with an amount of Rs. 3,33,207/-. The petitioner neither conveyed acceptance nor deposited the amount. Before 15% amount could be received by the respondents vide draft dated 21.12.2010, the letter of allotment was cancelled on 24.03.2009. It is the date of receipt of draft of Rs. 3,60,000/- i.e. 21.12.2010 which can be considered to be relevant for the purpose of determining the period required to be extended for deposit of the 15% of the amount. Such period is more than three years of the issuance of letter of allotment. Even the 10% of the total price, which is the application money financed from the Bank was deposited by the petitioner only on 8.2.2012. Thus, the petitioner has not actually deposited even 10% amount nor the balance 15% amount before the letter of cancellation of allotment was issued on 24.3.2009. The policy does not permit extension of time for a period of more than one year as well.

11. The earlier policy dated 09.04.1999 prescribes the period of condonation of delay in deposit of the 15% amount, the officer who can condone the delay and surcharge rate leviable on 15% amount. Such policy has been considered by this Court in CWP No. 16898 of 2014 Med as Om Parkash Thareja v. State of Haryana and others, decided on 28.08.2014, It was held that having failed to communicate the acceptance within 30 days, no concluded contract comes into existence in terms of Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others, . The Hon''ble Supreme Court in Jasbir Singh Chhabra and Others Vs. State of Punjab and Others, and Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others, , has also held that on failure to deposit total amount of 25%, no concluded contract comes into existence as the letter of allotment is only an offer which is required to be accepted so as to create a contract. In Jasbir Singh Chhabra''s case (supra) it was held as under:-

"17. The Division Bench of the High Court first considered whether the writ petitioners were entitled to invoke the doctrines of legitimate expectation and promissory estoppel, referred to the judgments of this Court in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , Union of India and others Vs. Hindustan Development Corpn. and others, , National Buildings Construction Corporation Vs. S. Raghunathan and Others, , M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, and Kasinka Trading and another, etc. etc. Vs. Union of India and another, held that even though the State Government and the Corporation, which is in an instrumentality of the State are expected to act fairly and reasonably in their dealing with the members of public, mere inviting of applications and draw of lots by the Corporation did not create a right in favour of the writ petitioners and they cannot invoke the doctrines of legitimate expectation and promissory estoppel for compelling the Corporation to allot plots to them in Phases VIII-A and VIII-B, Focal Point, Mohali because in the format of application, it was clearly mentioned that acceptance of the application form and earnest money will not place the Corporation under an obligation to allot plot to the applicant."

12. In Manju Jain''s case (supra), the Hon''ble Supreme Court allowed an appeal, wherein the allotment made to the petitioner stood cancelled for failure to deposit 25% of the amount within 60 days of the receipt of the allotment letter. The Hon''ble Court held that mere draw of lots/allocation letter does not confer any right to allotment. It was held to the following effect:-

"21. Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment.

22 to 28. xx xx xx xx

29. If the instant case is examined in the light of the aforesaid settled legal propositions, it becomes clear that Respondent 1 did not make any response whatsoever after applying for allotment. No explanation could be furnished by Respondent No. 1 for why she kept quiet for 4-1/2 years after receiving the allocation letter and why she did not make any attempt to find out what had happened to her application. Respondent 1 did not send her acceptance of the allotment; did not deposit the amount which became due in 1999 itself; and did not execute the required hire-purchase agreement with the appellant Authority. Thus, it is solely for her that no concluded contract came into existence between the parties. In such a fact situation, Respondent 1 could not be handed over the possession of the flat. The forfeiture of the earnest money is in terms of the statutory provisions."

13. The order in Poonam Arora''s case (supra) arises out of the fact, where not only the 15% amount was accepted but even subsequent installments. It was a decision on the facts of that case. The petitioner cannot seek any benefit from such an order. In view of the aforesaid judgments, we find that since the writ petitioner has not sent the acceptance letter within the time granted in the letter of allotment, no right accrues to the petitioner.

In view thereof, we do not find any merit in the present writ petition.

Dismissed.

